



January 26, 2000

Mr. Oscar Treviño
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2000-0258

Dear Mr. Treviño:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131573.

The Mercedes Independent School District, (the “district”), which you represent, received a request for a variety of information relating to a former employee of the district who is currently suing the district. You claim that item 1 of the request, “a copy of the attorney fee bills reflecting and/or relating to work or efforts spent by any attorney for the district regarding Mr. Juan Ramirez and his efforts to seek reinstatement,” is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code, as well as section 101.104 of the Civil Practice and Remedies Code. You state that the “district has released other information as requested without objection.” We have considered the exceptions you claim and reviewed the submitted information.

Attorney fee bills may not be excepted from disclosure under section 552.103. Section 552.022(a)(16) provides that “information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege” is public information and is not excepted from required disclosure. Attorney fee bills may be excepted only if expressly made confidential, and section 552.103 is not a confidentiality provision. Gov’t Code § 552.022(a).

You next raise section 552.101 for the attorney fee bills, arguing that they constitute “confidential and privileged information” and attorney work product. However, section 552.101 does not incorporate the attorney work product privilege. Open Records Decision No. 575 at 2 (1990). So you may not withhold the fee bills as attorney work product under section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. As a general rule, statutory confidentiality under section 552.101 requires express language making particular

information confidential; confidentiality will not be implied from the statutory structure. Open Records Decision Nos. 478 (1987), 465 (1987).

You assert that section 101.104 of the Civil Practice and Remedies Code, in conjunction with section 552.101, prohibits the disclosure of some of the requested information. Section 101.104 of the Civil Practice and Remedies Code provides as follows:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under this chapter.

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.--Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act). It does not make insurance information confidential for purposes of the Public Information Act, chapter 552 of the Government Code. See Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 "are not relevant to the availability of the information to the public"). Chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Gov't Code §§ 552.005 (chapter 552 does not affect the scope of civil discovery), .006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552); Attorney General Opinion JM-1048 (1989); see Open Records Decision No. 575 (1990) *overruled in part by* Open Records Decision No. 647 (1996) (section 552.101 does not encompass discovery privileges). We do not believe that insurance coverage information is made confidential by section 101.104. Consequently, the insurance information is not excepted from disclosure by section 552.101, and so the district may not withhold the information you have bracketed.

Finally, we discuss your section 552.107 claim. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have marked the portions of your highlighted information which we find to reveal legal advice or opinion. The district may withhold that information.

Furthermore, we note that you have submitted redacted copies of the information. We cannot accept that the name of a party to a telephone conversation is unrelated to the request when the district acknowledges that the conversation itself is related to the request. See telephone reference numbers 16741, 322709, 322711, 322712, 322713, and 322714, and one item labeled "06-10-99LAB." If that party's identity relates to legal advice or opinion or another confidential matter, you have not explained how. The Walsh, Anderson bill appears on its face to be entirely related to the *Ramirez* case; therefore, all of the information contained therein is responsive to the request. You must reveal and release the redacted portions of those records, except that student names must be withheld under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We are unable to determine whether the blacked-out information in the Ernesto Flores, Jr., bill is responsive to the request. In the future, you must submit the information in its entirety, without any redactions, in order for this office to properly review the information and make a determination.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.- Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 131573

Encl. Submitted documents

cc: Mr. Tony Conners
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(w/o enclosures)